

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OSVALDO VASQUEZ,

Petitioner,

06 Civ. 3112 (PKC) (KNF)

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 3/5/08

ORDER

-against-

JAMES J. WALSH, SUPERINTENDENT,
SULLIVAN CORRECTIONAL FACILITY,

Respondent.
-----x

P. KEVIN CASTEL, District Judge:

On May 22, 2002, petitioner Osvaldo Vasquez was convicted in New York Supreme Court, New York County, of robbery in the first degree. Petitioner received a sentence of fourteen years. On appeal, the Appellate Division First Department, affirmed his conviction but reduced his term of imprisonment to eight years. People v. Vasquez, 23 A.D.3d 222 (1st Dep't 2005). Petitioner then sought leave to appeal to the New York Court of Appeals, and leave was denied. People v. Vasquez, 6 N.Y.3d 782 (N.Y. 2007).

Petitioner now seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254, annexing his Appellate Division brief to his petition. I referred the petition to the Honorable Kevin Nathaniel Fox, United States Magistrate Judge. On October 5, 2007, Judge Fox issued a Report and Recommendation ("R & R") in which he recommended that the Court deny the petition.

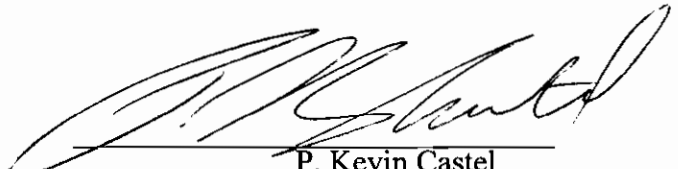
The R & R advised the parties that they had ten days from service of the R & R to file any objections, and warned in solid capital letters that failure to timely file such

objections would result in waiver of any right to object. As of the date of this Order, no objections have been filed and no request for an extension of time to object has been made. The R & R expressly called petitioner's attention to Rule 72(b), Fed. R. Civ. P., and 28 U.S.C. § 636(b)(1). Petitioner received clear notice of the consequences of the failure to object and has waived the right to object to the R & R or obtain appellate review. See Frank v. Johnson, 968 F.2d 298, 300 (2d Cir.), cert. denied, 506 U.S. 1038 (1992). See also Caidor v. Onondaga County, ___ F.3d ___, 2008 WL 451146 (2d Cir. Feb. 21, 2008).

Judge Fox reviewed petitioner's submission, the transcripts of petitioner's state court proceedings, and the case law governing the issues raised in the petition. I have reviewed Judge Fox's R & R and find it to be well-reasoned and grounded in the correct principles of law. On this record, the interests of justice do not require a de novo review. See Frank v. Johnson, 968 F.2d at 300. The R & R is adopted in its entirety, and the petition is DENIED. The Clerk is directed to enter judgment in favor of the respondent.

Petitioner has not made a substantial showing of the denial of a constitutional right and, accordingly, a certificate of appealability will not issue. 28 U.S.C. § 2253; see Lozada v. United States, 107 F.3d 1011, 1067-17 (2d Cir. 1997), abrogated on other grounds by United States v. Perez, 129 F.3d 255, 259-60 (2d Cir. 1997). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith. See Coppedge v. United States, 369 U.S. 438 (1962).

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
March 5, 2008